

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA

TRINITY UNIVERSAL INSURANCE  
COMPANY,

*Plaintiff,*

v.

TURNER FUNERAL HOME, INC.;  
ROBERT K. SCHRADER; LARRY  
T. DOWDEN; and JAMES M. TURNER

*Defendants.*

No. 1:02-cv-231

*Edgar*

***-and-***

NATIONAL GRANGE MUTUAL  
INSURANCE COMPANY,

*Plaintiff,*

v.

TURNER FUNERAL HOME, INC.;  
MIKE J. TURNER; VIRGINIA  
TURNER; LARRY T. DOWDEN;  
and ROBERT K. SCHRADER,

*Defendants.*

No. 1:02-cv-298

*Edgar*

***-and-***

STATE AUTO INSURANCE  
COMPANIES,

*Plaintiff,*

v.

TURNER FUNERAL HOME, INC.;  
ROBERT K. SCHRADER; LARRY  
T. DOWDEN; and JAMES M. TURNER

*Defendants.*

No. 1:02-cv-083

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## O R D E R

In accordance with the accompanying memorandum opinion,

- (1) That aspect of Trinity's motion for a summary judgement [Case No. 1:02-cv-231, Court File No. 5] which seeks a summary judgment as to the businessowners policies and commercial umbrella policies issued by Trinity to Turner is **GRANTED** as follows:
  - (a) The Court **DECLARES** pursuant to 28 U.S.C. § 2201, that Trinity has no duty to defend and indemnify the Turner defendants with regard to the claims of the plaintiffs in the underlying actions under the four businessowners policies issued by Trinity to Turner; and
  - (b) The Court **DECLARES** pursuant to 28 U.S.C. § 2201, that Trinity has no duty to defend and indemnify the Turner defendants with regard to the claims of the plaintiffs in the underlying actions under the commercial umbrella policies issued by Trinity to Turner to the extent that the commercial umbrella policies follow form of the businessowners policies issued by Trinity to Turner.
- (2) That aspect of Trinity's motion for a summary judgement [Case No. 1:02-cv-231, Court File No. 5] which seeks a summary judgment as to the professional liability policies and commercial umbrella policies issued by Trinity to Turner is **DENIED** as follows:
  - (a) The Court **DECLARES** pursuant to 28 U.S.C. § 2201, that Trinity has a duty to defend the Turner defendants with regard to the claims of the plaintiffs in the underlying actions under the professional liability policies issued by Trinity to Turner, except in *Hughes*, Case No. 02-C-698; *Workman*, Case No. 02-C-420 (Hamilton County Tennessee); *Workman*, Case No. 02-CV-4422 (Walker County, Georgia); *Cash*, Case No. 02-C-1391; and *Dunn*, Case No. 02-C-1391;
  - (b) The Court **DECLARES** pursuant to 28 U.S.C. § 2201, that Trinity has a duty to defend the Turner defendants with regard to the claims of the plaintiffs in the underlying actions under the commercial umbrella policies issued by Trinity to Turner to the identical extent it has a duty to defend the Turner defendants under the professional liability policies it issued to Turner; and,
  - (c) The Court **DECLARES** pursuant to 28 U.S.C. § 2201, that Trinity has a duty to indemnify the Turner defendants with regard to the claims of the plaintiffs in the underlying actions under the professional liability policies and commercial umbrella policies issued by Trinity to Turner. The nature and extent of Trinity's

duty to indemnify, which is not as broad as Trinity's duty to defend the Turner defendants, is discussed in detail in subsection II, paragraph (3) of the Memorandum which accompanies this Order. As is discussed in that subsection, Trinity has no duty to indemnify the Turner defendants with regard to the plaintiff's claims of mental anguish/emotional distress in the underlying actions. Further, the Court cannot determine Trinity's duty to indemnify with exact specificity at this point in time. However, as discussed above, Trinity may have a duty to indemnify the Turner defendants with regard to claims for breach of contract concerning the handling of the remains, negligent hiring/supervision of Tri-State, negligent entrustment of the bodies to Tri-State, negligent failure to treat the remains with dignity and respect, negligent failure to comply with state statutes governing the handling of corpses, negligent misrepresentation, fraud, deceit, unjust enrichment, breach of fiduciary (special) duty, and violations of the Tennessee Consumer Protection Act and RICO asserted in the underlying actions to the extent these claims are found to have merit.

- (2) NGMIC's motion for a partial summary judgment [Case No. 1:02-cv-298, Court File No. 30] is **GRANTED** as follows:

The Court **DECLARES** pursuant to 28 U.S.C. § 2201, that NGMIC has no duty to defend and indemnify the Turner defendants with regard to the claims of the plaintiffs in the underlying actions based upon the second of the two businessowners policies, effective March 1, 2002, which it issued to Turner.

- (3) SAIC's motion for a summary judgment [Case No. 1:03-cv-038, Court File No. 12] is **GRANTED** as follows:

The Court **DECLARES** pursuant to 28 U.S.C. § 2201, that SAIC has no duty to defend and indemnify the Turner defendants with regard to the claims of the plaintiffs in the underlying actions based upon any of the policies it issued to Turner.

- (4) The motion of Trinity [Court File No. 52] to strike NGMIC's motion for partial summary judgment [Court File No. 43] is **DENIED**.
- (5) That aspect of the motion of NGMIC for a partial summary judgment [Court File No. 43] which seeks certain declaratory judgment against SAIC: (1) that its obligation to defend or indemnify the Turner defendants is excess to the SAIC policies; (2) that NGMIC owes a duty to defend and/or indemnify the Turner defendants only after the exhaustion of the full limits of the SAIC policies; and (3) that NGMIC should be reimbursed by SAIC for the amounts it has paid to defend Turner in the underlying lawsuits is **DENIED**.

- (6) That aspect of the motion of NGMIC for a partial summary judgment [Court File No. 43] in which NGMIC seeks a declaratory judgment against Trinity with regard to the Trinity businessowners policies, particularly, that any defense and indemnity that NGMIC owes the Turner defendants would be pro rata to the defense and indemnity obligation which Trinity owed to the Turner defendants under the Trinity businessowners policies, is **DENIED**.
- (7) That aspect of the motion of NGMIC for a partial summary judgment [Court File No. 43] in which NGMIC seeks a declaration that its obligations to defend or indemnify the Turner defendants are excess to Trinity's obligations under the professional liability policies; and, that it owes no defense or indemnity to the Turner defendants until the full limits of the Trinity professional liability policies have been exhausted is **DENIED**.
- (8) That aspect of NGMIC's motion for a partial summary judgment [Court File No. 43] in which NGMIC seeks a declaratory judgment with regard to the Trinity professional liability policies: (1) that its obligations to defend or indemnify the Turner are excess to Trinity's obligations under the professional liability policies and (2) that it owes no defense or indemnity to the Turner defendants until the full limits of the Trinity professional liability policies have been exhausted is **DENIED**.
- (9) That aspect of NGMIC's motion for a partial summary judgment [Court File No. 43] in which NGMIC seeks reimbursement from Trinity for some of the sums it has already expended in defending the Turner defendants against the claims of the plaintiffs in the underlying actions is **GRANTED**. However, further action to determine the nature and extent of the reimbursement, if any, from Trinity to NGMIC is hereby held in **ABEYANCE** until such time as the claims of the plaintiffs in the underlying lawsuits have been resolved and both Trinity and NGMIC have completely fulfilled their obligations to defend the Turner defendants in the underlying actions.

SO ORDERED.  
ENTER.

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R. ALLAN EDGAR  
CHIEF UNITED STATES DISTRICT JUDGE